JUN 24 1960
JAMES R. BROWNING,

No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Joint Brief for Louisiana, Mississippi and Alabama in Support of Their Respective Petitions for Rehearing

JOE T. PATTERSON
Attorney General
State of Mississippi
Jackson, Mississippi

MacDONALD GALLION
Attorney General
State of Alabama
Montgomery, Alabama

JACK P. F. GREMILLION
Attorney General
State of Louisiana
Baton Rouge, Louisiana

INDEX

Joint Brief for Louisiana, Mississippi and Alabama in Support of Their Respective Petitions for Rehearing

PAGE

PRELIMINARY STATEMENT 1

ARGUMENT:

I. Louisiana, Mississippi and Alabama have expressly defined seaward boundaries beyond three miles..... 1

II. The Submerged Lands Act does not require an expressly defined boundary as the measure of restoration..... 7

III. Emphasis and meaning must be given to Spanish claims..... 10

IV. Actions by the United States after the admission of Louisiana, Mississippi and Alabama constitute congressional recognition of the boundaries they claim..... 11

V. Differences in the Acts of Admission of Louisiana, Mississippi and Alabama do not conflict with their claims to three leagues from coast under the Submerged Lands Act 17

VI. Early State Department action does not conflict with the claims of Louisiana, Mississippi and Alabama..... 18

VII. Parity of treatment is required by Submerged Lands Act..... 22

PAGE

VIII. Louisiana, Mississippi and Alabama are entitled to three leagues on the basis of long continued possession and control..... 27

CONCLUSION:..... 30

CITATIONS

CASES:

Boyd v. Nebraska, 143 U.S. 135..... 25

Coyle v. Smith, 221 U.S. 559, 566-7..... 25

Dick v. United States, 221 U.S. 340..... 25

Escabana Transportation Co. v. Chicago, 107 U.S. 678..... 25

Harcourt v. Gaillard, 12 Wheat. 524..... 4

Louisiana v. Mississippi, 202 U.S. 1.....1, 2, 3, 6

Manchester v. Massachusetts, 139 U.S. 240.....9, 21

Pearcy v. Stranahan, 205 U.S. 257..... 5

United States v. California, 332 U.S. 19.....4, 29

United States v. Texas, 339 U.S. 180..... 24

Wisconsin v. Michigan, 295 U.S. 455..... 24

CONGRESSIONAL ACTS:

Act of March 26, 1804 (Orleans Territory Organic Act, 2 Stat. 283, Supp. Sec. 1301..... 5, 6

Act of Congress of February 10, 1807, authorizing survey of United States Coasts, Laws of U.S.A., Vol. 4, pp. 1789-1815..... 20

Act of Congress of February 20, 1811, authorizing inhabitants of Louisiana Territory to form constitution and state government, 2 Stat. 641..... 5

PAGE

Act of Congress of April 8, 1812, admitting Louisiana into the Union, 2 Stat. 701.....1, 4, 5, 6, 8, 11, 13, 14, 17

Act of Congress of December 10, 1817, admitting Mississippi into the Union, 3 Stat. 472.....6, 7, 8, 11, 17

Act of Congress of December 14, 1819, admitting Alabama into the Union, 3 Stat. 608.....6, 7, 8, 11, 17

Joint Resolution of Congress of March 1, 1845, annexing Texas, 5 Stat. 797..... 7

Joint Resolution of Congress of December 29, 1845, for the admission of Texas into the Union, 9 Stat. 108..... 8

Act of Congress of March 3, 1845, admitting Florida into the Union, 5 Stat. 742..... 7

Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U.S.C. 1301.....7, 8, 9, 13, 19, 22, 28

CONGRESSIONAL HEARINGS AND REPORTS:

Testimony of Secretary McKay, 1953, House Hearings, pp. 197, 198..... 13

House Report No. 215, 83rd Congress, 1st Session.....23, 25, 28, 29

Senate Report No. 133, 83rd Congress, 1st Session 4, 23, 28

STATE STATUTES:

Act defining the boundaries of Georgia, Ga. Code Ann. Secs. 15-101..... 21

PAGE

Georgia's Original Charter, (1732, Schley's Digest, (1826), pp. 429, 436; Ga. Code Rev. (1867) 22

Texas Boundary Act (1836) 7, 12, 25, 26

CONSTITUTIONS:

Florida Constitution (1868), 25 Fla. Stat. Ann. 411, 413 ..... 7, 12, 25

TREATIES:

Treaty of Amity, February 22, 1848 ..... 11, 25

Treaty of Cession, February 10, 1763 ..... 1, 4, 15

Treaty of Paris, April 30, 1803 2

Treaty of Guadalupe Hidalgo, February 2, 1848 ..... 15, 16

MISCELLANEOUS:

Andres Bello, Principes de Derecho Internacionale, Precis, Book 2, Chap. 1, Sec. 40 (1844) 11

Estaban de Ferrater, Code of International Law, Vol. II, p. 151 11

Francesco Formati, Encyclopedia Legale Overo Lessico Ragionato, Vol. III, p. 367 (1839) 11

Message of President Jefferson, December 5, 1805 20

Proclamation of LaSalle (1682) 14

Louisiana's answer to original complaint, pp. 21-26 ..... 27, 28

Manuel Maria Mediedo, Tratado de Derecho de Justes, Internacionale (1874) 11

No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Joint Brief for Louisiana, Mississippi and Alabama in Support of Their Respective Petitions for Rehearing

PRELIMINARY STATEMENT

The issues drawn and the conclusions reached by the Court herein bear sufficient similarity to obviate the necessity of three separate briefs in support of the petition of each state for rehearing. While the Acts of Admission of Louisiana, Mississippi and Alabama have been declared not to be in pari materia (*Louisiana v. Mississippi*, 202 U.S. 1), the same questions are presented, (a) as to whether the limits of said states are water boundaries and (2), if so, how far seaward those boundaries extend.

ARGUMENT

I. Louisiana, Mississippi and Alabama Have Expressly Defined Seaward Boundaries Beyond Three Miles

The Act of Admission of Louisiana gave the State of Louisiana "all that part of the territory or country ceded under the name of Louisiana, by

the treaty made at Paris on the thirtieth day of April, One Thousand Eight Hundred and Three, between the United States and France, contained within" the limits described. The description concluded with the phrase "including all islands within three leagues of the coast." The only seaward measure employed was three leagues and was intended, as the preceding part of the statute declares, to set the seaward limits of the state. "Within the limits" when used geographically, is a phrase employed to designate boundaries. "Including" also conveys the meaning of embracing.

This was specifically recognized in *Louisiana v. Mississippi*, supra, page 36, when the Court said, after quoting the language of the Act of Admission:

> "Map or diagram No. 1, given in the opening statement, *shows the limits* as thus defined." (Emphasis ours.)

That diagram shows the *LIMIT* of the State of Louisiana at a line in the Gulf of Mexico extending beyond the islands which the opinion in that case states to be the coast of Louisiana and into the Gulf of Mexico for what purports to be three leagues around the entire perimeter of Louisiana. Yet, the Court in the present case says, "There is, however, no indication whatever that the line so indicated bore any relation to the three league provision in the Louisiana Act of Admission" (Op. 66). This does not comport with the meaning given the map in the cited case, nor with the language which the map was intended to illustrate, nor with the visual aspect of the

map itself. The map shows beyond any argument a water boundary of the State of Louisiana. Note particularly that at the mouth of the Sabine the line EXTENDS into the sea; it embraces all islands; and above all the Court said it "shows the limits, *as thus defined*," that is, three leagues from Coast. When later in the opinion the Court in *Louisiana v. Mississippi*, *supra*, said "Questions of the breadth of the maritime belt or the extent of the sway of the riparian states require no special consideration here.", it was only because, as the Court immediately added, "The facts render such decision unnecessary", since the Court proceeded to make its determination as between the two states on the basis of the location of the thalweg and historic recognition.

It is impossible to say that the representation of the limits of the State of Louisiana, which the court made in *Louisiana v. Mississippi*, is not directly in conflict, first, with the statement of the Court in this case that the language of the Act appears clearly to support the Government's position (Op. 63); second, that the language of the Act evidently contemplated no territorial sea whatever (Op. 64), and, finally, that there is no indication whatever that the line indicated on the diagram referred to bore any relation to the three league provision in the Louisiana Act of Admission (Op. 66).

Assuming as we must that there is a territorial area seaward of coast for at least a distance of three miles, the *minimum* area covered by the Sub-

merged Lands Act, it must be conceded that the United States had a territorial sea at the time these states were admitted to the Union. The law then was that there was "no territory within the United States that was claimed in any other right than that of some of the confederate states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of, some one of the states." *Harcourt v. Gaillard*, 12 Wheat. 524, (1827). See also Senate Report No. 133 at page 59. The Court did not follow this in the California case[1] decided in 1947 but recognized that this was the understanding of the Court and Congress in the early days of the Republic.

The conclusion in the opinion of the court that the reference to three leagues in Louisiana's Act of Admission serves only to define a limit within which islands belong to the State of Louisiana and not a seaward limit of the State, gives only partial effect to the words "within three leagues of the coast." France having reacquired from Spain "the colony or province of Louisiana" with the same extent that it then had in the hands of Spain and that it had when France possessed it, ceded to the United States the said territory, "with all its rights and appurtenances" as so acquired, including the adjacent islands belonging to Louisiana. The inhabitants of the ceded territory were to be incorporated in the Union of the United States.

---

[1] *United States v. California*, 332 U. S. 19.

The terrritory of Orleans was created by constituting "all that portion of country ceded by France to the United States under the name of Louisiana", within limits clearly designating the entirety of the southern portion thereof. The Act of Congress of February 20, 1811, 2 Stat. 641, authorized the inhabitants of "that part of the territory or country ceded under the name of Louisiana", contained within stated limits, to form for themselves a constitution and state government. The Act of Admission referred to "the people of all that part of the territory or country ceded under the name of Louisiana", contained within stated limits. The "territory or country of Louisiana" included the islands forming a part thereof, without the necessity of saying so, and the islands historically forming a part of that territory or country would have been included simply by reference to the "territory or country" of Louisiana.

Thus, in *Pearcy v. Stranahan*, 205 U.S. 257, 51 L.Ed. 793, 27 Sup. Ct. 545, the Isle of Pines was comprised within the designation of "Cuba", although it was not referred to specifically or generally by reference to islands within any limit. This was so by application of general principles of international law. As a result of the Spanish-American War as between the United States and Cuba, Cuba, including the island in dispute, was considered to be territory held in trust for the inhabitants of Cuba, to whom it rightfully belonged and to whose exclusive control it was to be surrendered when a suitable government

was established. Similarly, by virtue of the trust in favor of the inhabitants of the territory or country of Louisiana which was imposed upon the United States in its acquisition from France, the islands off Louisiana's coast were part of the country, or territory of Louisiana formed into the territory of Orleans and held in trust for the people thereof. Hence, if the phrase "including all islands within three leagues of the coast" is to be interpreted only as defining the limits beyond which Louisiana would not own islands, it is tautalogical. On the contrary, as the Court said in *Louisiana v. Mississippi, supra*, this phrase defined a limit of the State of Louisiana. If the phrase "including all islands within three leagues of the coast" did not encompass the waters within that distance, then the phrase "by a line to be drawn along the middle of the said river, (Sabine), including all islands," would not have encompassed the waters of the Sabine river to the middle thereof. This is manifestly untrue in both cases. The line or distance was a limit of territory.

Thus the Act of Congress makes it certain that the State of Louisiana embraces all of the southern part of the Louisiana territory. The history of nations and the works of law writers show that this includes a territorial sea for the nation; that at the pertinent times this was indisputably recognized for the benefit of the state, and that the only measure set was three leagues. Mississippi and Alabama had similar Acts of Admission. All three had expressly de-

fined state boundaries complying with the test set by the majority of the Court (Op. p. 20).

II. The Submerged Lands Act Does Not Require an Expressly Defined Boundary as the Measure of Restoration

We do not agree that this test of expressly defined State boundaries is imposed by the Submerged Lands Act. That language is not found in it and we do not believe the language of the Act or its legislative history supports that conclusion.

When the Submerged Lands Act was pending, Congress was fully aware of the Acts of Admission of Louisiana, Mississippi, Alabama and the Act of Annexation of Texas and the Act of Admission of Florida and of the Revised Constitution of Florida in 1868. The Congress knew that the United States had formed Louisiana out of all of the southern portion of the Louisiana territory and that it had formed out of acquisitions from Spain and England the southern portions of the States of Mississippi and Alabama. Congress knew that the essential purpose of the Submerged Lands Act was to restore to the littoral states the areas which they had claimed unchallenged by the Federal Government throughout all of their history until it was inspired by the discovery of rich oil deposits wholly under state leases to lay claims thereto. In the light of this knowledge and knowing that the Texas Boundary Act had an explicit definition of a seaward boundary three leagues from land and that the Florida Constitution of 1868 had an explicit defi-

nition of a boundary three leagues from land, Congress refused to limit the grant of three leagues to those two states and instead chose to use language embracive enough to permit all five of the Gulf Coast States to have the three league boundary.

Actually, as the Congress knew, there was a reference to a specific three league measurement in the Act admitting Louisiana into the Union in 1812 and a specific reference to a six league measurement in the Acts admitting Mississippi and Alabama to the Union in 1817 and 1819. There was no specific reference to any measurement in the sea at all in the Act admitting Florida in 1845 nor in the Act annexing Texas in 1845. Florida, therefore, sought and obtained an amendment to the act giving effect to subsequent recognition by Congress of a three league water boundary. The amendment sought by Florida is not limited to Florida, but the benefit of it is available to all the Gulf Coast States. Texas sought and obtained an amendment relating to boundaries prior to admission to the Union, having in mind, of course, the boundary established by the Republic of Texas. There, again, the provision was not restricted to Texas but the benefit of it is available to all of the Gulf Coast States. Louisiana, Mississippi and Alabama have never doubted that their Acts of Admission expressly defined a water boundary three leagues or more from land; three leagues from coast for Louisiana, six leagues from shore for Mississippi and for Alabama.

This Court has noted that the Submerged Lands

Act does not contain a formula to be applied by the Court. The Court has found that some of the states on the Atlantic and Pacific Oceans had specifically asserted a three mile seaward boundary from the beginning; others had extended their boundaries that far under the ruling of this Court in *Manchester v. Massachusetts*, 139 U.S. 240, 1891, and still others were silent on the subject and the Congress reconciled these differing conditions by "the confirmation of each Coastal State's seaward boundary at three miles." (Op. p. 20)

The Congress also treated all of the Great Lake States alike, fixing their boundaries at the international line which is far more than three leagues and, in fact, seventy to eighty miles from shore in some instances.

We think it is clear that Congress also concluded to treat the Gulf Coast States alike, giving each of them three miles and the opportunity to have as much as but not more than three leagues on showing that their boundaries *before*, or *at the time*, or *after* their admission into the Union were recognized as extending that far. The Congress thus provided language sufficiently broad to cover all of the varying situations of the Gulf Coast States. The intention thus was not to require this Court to do equity but that Congress intended to do so and manifested that intention by first rejecting the request to make a specific boundary for any one or two of the Gulf Coast States, and then by refraining from posing a precise

formula, and finally by favorably considering reports in which the validity of the boundaries of all Gulf Coast states were asserted on historic foundations. Thus Congress made clear its intent to provide for an equitable restoration.

We submit that the Congress left for the determination of the Court only that each state had historic criteria sufficient to show that the states had reasonable basis for and had acted upon three league boundaries without challenge—that it did not require an expressly defined boundary.

III. Emphasis and Meaning Must Be Given to Spanish Claims

The Court properly gave emphasis to the claims of Spain to three leagues in the Gulf of Mexico as supporting the claims of Florida and Texas but did not apply this for Louisiana, Mississippi and Alabama. Yet, the Court says that the boundaries of these States are to be judged by the same standards as Texas (Op. p. 62), and inferentially by the same standards as Florida. The Spanish custom of claiming three leagues was one of the standards used. The first territory of the United States which had belonged to Spain on the Gulf of Mexico was the Louisiana Territory which Spain held from 1763 to 1803, the very year in which the United States acquired it.

The next territories on the Gulf of Mexico acquired by the United States were those which formed the coastal portions of the States of Mississippi and Alabama ceded to the United States by Spain in the

Treaty of Amity in 1819. True, the United States had earlier claimed these territories from England as a result of our War of Independence, but England in turn had acquired the territory from Spain in 1763. So the Spanish right to three leagues in the Gulf of Mexico cannot fairly be ignored in respect to Louisiana, Mississippi and Alabama.[2] It actually supports the claim of these three states to three leagues into the Gulf of Mexico. The Court has noted that the claims of Texas and Florida to three league boundaries were predicated upon the Spanish custom of claiming three leagues of territorial waters. This was not just a custom. It was a recognized rule of law. "The sea belongs to the state which it washes only so far as a distance of three leagues measured by a line parallel to the coast." (Esteban de Ferrater, Code of International Law, Vol. II, p. 151.)

IV. Actions by the United States After the Admission of Louisiana, Mississippi, and Alabama Constistitute Congressional Recognition of the Boundaries They Claim

Louisiana, Mississippi and Alabama meet the test of an express boundary in their Acts of Admission

---

[2]As to the 3 league territorial sea claimed and recognized by Spain, see:

Francesco Formati "Encyclopedia Legale Overo Lessico Ragionato", Vol. III, p. 367 (1839).

Andres Bello "Principes de Derecho Internacionale". Precis, Book 2, Chap. 1, Sec. 40, (1844).

Manuel Maria Mediedo "Tratado de Derecho de Justes, Internacionale." (1874).

through the normal application of the language used and application of equitable principles on the analysis of that language which the Congress intended. They also meet the test that the Acts of the United States since the admission of these States into the Union constitute a recognition of their boundaries as being at least three leagues from the coast. The Court applied for the benefit of Florida an implied recognition of a three-league boundary in 1868, by approval of a Constitution which Florida adopted in order to regain admission of its representatives to Congress following the Civil War, though it would be most unlikely that such an occasion would have been used by the Congress to extend the areas of a southern state.

The Court found an implied approval of the Texas Boundary Act of 1836 by reference to action of the Federal Government in its dealings with Mexico concerning the international boundary between the two countries by the Treaty of Guadalupe Hidalgo which fixed the boundary separating the United States and Mexico on lands and in the sea (Op p. 58), and thus recognized a maritime territory for Texas. (Op. p. 57)

The Court concluded that "if, as in the case of Texas, Congress employs an uncertain standard in fixing a state's boundaries, we must nevertheless endeavor to apply that standard to the historical events surrounding that admission" (Op. p. 47), and as a matter of fact the Court interpreted the historic

events subsequent to the admission of Texas, which we think was proper.

The Court's opinion on page 24 states that it was the purpose of the Submerged Lands Act to restore the ownership of submerged lands to the states within their present boundaries "determined however by the historic action taken with respect to them jointly by Congress and the state."

In support of this statement the court, in note 44, page 25 of the opinion, quotes the following statement made by Secretary McKay:

> "Both Spain and France exerted influence over and claimed, owned, and controlled a marginal belt as part of the Louisiana territory, as shown by maps then used and still in existence.
>
> "Obviously, we must resort to all of such ancient documents in order to determine the true and actual historic boundaries of each state, and as a practical matter, that is exactly what this bill permits and accomplishes . . ."

The foregoing statement by the Court and the note reference were made and alluded to in connection with the determination of the Texas claim to three leagues. However, when it came to a consideration of the boundaries of the State of Louisiana the Court said on page 67 that "Louisiana's preadmission history is relevant in this case only to the extent that it aids in construing the Louisiana Act of Admission." No such statement was made with reference to Texas, and it is submitted that this statement is inappropriate in Louisiana's case. The Court

then went on to commit an even greater error when it stated on page 67: "Louisiana's preadmission territory, consistently with the Act of Admission, stopped at its coast and did not embrace any marginal sea."

The Court then erroneously stated that LaSalle's proclamation in 1682 indicates that the mouth of the Mississippi River "defined the extent of the claim and that the territory included no marginal sea whatever."

We submit that the proclamation does not support this conclusion. The proclamation states in its first paragraph that LaSalle took possession in the name of France of all "this country of Louisiana, the **seas, ports, bays, adjacent straits,** and all the . . . minerals, fisheries, streams and rivers comprised in the extent of said Louisiana." To say that France by this proclamation claimed only the territory as far as the mouth of the River or to the border of the Gulf of Mexico is to ignore that portion of the proclamation which states that France also took possession of the seas, ports, bays and adjacent straits. When LaSalle took possession of the seas he undoubtedly meant the high seas adjacent to the bays and straits as well as the coast of the State of Louisiana. Justice cannot be done to this proclamation by eliminating these meaningful words from their context.

The Treaty of Cession, whereby the territory of Louisiana was acquired from France, included not

only the territory, but the very first article of the Treaty ceded to the United States reads:

> "The said territory with all its rights and appurtances."

The rights and appurtenances would include the adjacent bays, straits and seas claimed by LaSalle on behalf of France. It must be remembered that **all** of the southern part of the Louisiana Territory was included in the territory of Orleans, and subsequently in the State of Louisiana which comprised all of the Territory of Orleans.

The action of the United States in fixing a boundary with Mexico in the Gulf of Mexico redounds to the benefit of Texas; accordingly, it seems necessary to say that equitable considerations as well as the legal principle of maintaining the states on an equal footing would make this maritime boundary of the United States redound to the benefit of all of the component states of the Union of States bordering on this same Gulf or inland sea.

It also follows that the action of the United States in fixing a boundary in the sea at the mouth of the Sabine with Spain and Mexico and with the Republic of Texas redounds to the benefit of Louisiana, Mississippi and Alabama. Moreover, the national boundary fixed by the Treaty of Guadalupe Hidalgo could not have been only for the purpose of benefiting Texas. **The boundary was established for the benefit of the parties to the Treaty, the United**

States and Mexico, and constituted recognition of the earlier Louisiana boundary as well as a recognition of the earlier Texas boundary. No mention of Texas or any other state is made in the Treaty of Guadalupe Hidalgo. The purpose of the treaty was to establish land and sea boundaries between the United States and Mexico from the Gulf to the Pacific Ocean. Article V of the Treaty specifically states "the boundary line **between the two Republics** shall commence in the Gulf of Mexico, three leagues from land. . ."

This Court's opinion accordingly says on page 57:

> "The portion of the boundary extending into the Gulf, like the rest of the line, was intended to separate the territory of the two countries, and to recognize that the maritime territory of Texas extended three leagues seaward."

There was no reason to limit this national boundary in the sea to Texas alone.

Your Honors' opinion on page 58, states:

> "We believe the conclusion is clear that what the line, denominated a 'boundary' in the Treaty itself, separates is territory of the restrictive [respective] countries . . . it separates the maritime territory of the United States and Mexico."

There can be no doubt that the Treaty fixed the maritime territory of the United States three leagues in the sea. Necessarily, it also fixed the seaward boundaries of the Gulf States.

V. Differences in the Acts of Admission of Louisiana, Mississippi and Alabama Do Not Conflict With Their Claims to Three Leagues from Coast Under the Submerged Lands Act

The majority opinion was concerned with the seeming inconsistency between the Act of Admission of Louisiana which included an area within three leagues from coast, and the Acts of Admission of Mississippi and Alabama which included an area within six leagues from shore. The explanation is that the United States claimed all that its predecessors had claimed. The Spanish claim to which the United States became entitled as to Louisiana, Mississippi and Alabama was to a marginal sea of three leagues. The English claim to which the United States became entitled was to a marginal sea of six leagues, so the United States properly claimed that for the territory to which it applied.

Geographically speaking, there is no difference between boundaries described in the Acts of Admission of Louisiana, Mississippi and Alabama, except the terminology used—Louisiana's boundary is three leagues from *coast* whereas the boundaries of the other two states are six leagues from *shore*. "Coast" and "shore" are not synonymous and Congress did not intend them to be when it admitted these states.[3] The islands off the shores of Mississippi and Alabama are all approximately three leagues

---

[3]Bouvier's Law Dictionary Vol. 1, p. 507, 43 USC 1301(c).

distant. The same is true of Louisiana's islands near Mississippi Sound but which islands are at much less distances elsewhere in the Gulf of Mexico. A boundary three leagues from Louisiana's coast would extend three leagues beyond the seaward edge of the islands. In other words, the seaward edge of the Mississippi and Alabama islands constitute the coast lines of these states, and six leagues from shore is equivalent to three leagues from *coast* for these states.

Alabama in its petition for rehearing points out the absurdity of the "Six leagues from shore" description, unless that description means that its seaward boundaries extend that far. Alabama rightly says that if Congress meant only to include islands in this description it would have provided a boundary three leagues from shore since no islands extend further seaward than 2.87 leagues. It must be assumed that Congress could read the maps that existed in 1817, and these would have indicated that all islands would be included within a three league boundary. But Congress added three leagues beyond the islands making six leagues in all, and it must have had a purpose in doing so. The same thing is true in the case of Mississippi.

VI. Early State Department Action Does Not Conflict With the Claims of Louisiana, Mississippi and Alabama

It should be remembered that the extent or validity of the national boundary would not operate to limit a state boundary as between the state and the

United States in giving effect to the Submerged Lands Act. As this Court said ". . . there is no question of Congress' power to fix state land and water boundaries as a domestic matter." (Op. p. 31). And ". . . a state territorial boundary beyond three miles is established for purpose of the Submerged Lands Act by Congressional action so fixing it, irrespective of the limit to territorial waters." (Op. p. 32). The Court has recognized that in the cases of Texas and Florida, Congress approved a three league boundary for domestic matters, yet in the case of Louisiana, Alabama and Mississippi it has concluded that a reference to three leagues and references to six leagues must not be considered as a boundary or limit because not consistent with the United States claim of a three mile territorial sea and because the reference first to three leagues and then to six leagues could not evidence a consistent policy of a claim to a territorial sea of three leagues in the Gulf. It is wrong to assume that the rights of Louisiana, Mississippi and Alabama have to be based on a consistent claim by the United States of three leagues in the Gulf. The true position is that in establishing the boundaries of each of the States as a **domestic** matter, Congress used the historic claims and extent of each as determined by their extent when acquired by the United States, which claims vary because of the difference in the claims of their former owners and were not necessarily consistent with the position of the Executive in dealing with other nations respecting the freedom of the seas.

The Court in rejecting the claims of Louisi-

ana, Mississippi and Alabama cites the action of the State Department of the United States in 1793 restricting its territorial sea to three miles after the Treaty of Independence had defined the nation's boundaries as "comprehending all islands within twenty leagues of any part of the shores of the United States" (Op. p. 64). It would seem that an Act of Congress is required to change the national boundaries and that neither the President nor the State Department has power to do so. Moreover, Mr. Jefferson's correspondence cited in Note 111 of the Majority Opinion clearly states that the United States is entitled "in reason to as broad a margin of protected navigation as any nation whatever" and that "reserving the ultimate extent of this for future deliberation" the marginal belt would be "restrained for the present to the distance of one sea league." This temporary restriction was made to avoid embroilment of our new and relatively weak nation in the war then under way between England and France. It should be remembered that twelve years later (1805) President Jefferson in his 5th Annual Message to Congress asserted jurisdiction to the Gulf Stream, and Congress passed the Act of February 10, 1807 directing the President to cause a survey to be made of the coasts of the United States within 20 leagues of its shores, and to take steps to serve the commercial interests of the United States in these waters. It, therefore, follows that the action of the United States regarding its 20 league jurisdiction does not in any way militate against the claims of the Gulf States, but supports them.

It is also important to note that the provisional three mile limit applied only to the Atlantic coast where all of the American Colonies were located in 1793, and has never been applied to the Gulf territories which were acquired many years later. What the nation did as a matter of expediency in this special situation formulates no rule of law for all time to come, and for all coasts and seas under all circumstances.

Georgia's Boundary Act does not conflict with the claims of Louisiana, Mississippi and Alabama. The Court refers to an Act of the Legislature of Georgia which asserts claim to only three miles of territorial sea and yet claims title to all islands 20 leagues from coast. (Op. p. 65). This proves nothing. The State of Georgia, and any other seacoast state may limit its jurisdiction or boundary to the shore if it so desires, or it may extend its boundaries seaward any distance that the law allows.[4] Louisiana extended its boundaries 27 miles seaward and Texas extended its boundaries to the edge of the Continental Shelf, but the Acts of the Legislatures of these states established no precedents that would bind the legislature of Georgia or any other states. The boundaries of Louisiana, Mississippi and Alabama in the Gulf of Mexico are determined by their Acts of Admission and cannot be restricted by subsequent federal legislation without the states' consent. They can be extended to the national maritime boundary by Act of the State Legislature whenever that boundary is changed. Actually

---

[4]Manchester vs. Massachusetts, 139 U.S. 264.

the so-called three mile boundary of Georgia did not come into existence until comparatively recent years. The first reference we have found to it is in the 1916 Act. Georgia's original charter in 1732 referred to "the islands in the sea, within twenty (20) leagues of the same, . . ." (Charter of the Province of Georgia, Schley's Digest, 1826, pp. 429-436). The same appears in Article I, Boundary of the State of Georgia (Code Revised by D. Irwin in 1867, pp. 5 and 6). While both of these mention the twenty (20) league measure, neither of them mention any three (3) mile limit. Georgia's decision in 1916 to establish a three mile water boundary despite the claim to islands within twenty (20) leagues reveals no conceivable intent of our Government, in 1803, 1812, 1817, 1819, 1838, 1845, and 1868.

VII. Parity of Treatment Is Required By Submerged Lands Act

The interests of the United States, as declared by the Congress in the Submerged Lands Act, require parity of treatment of the Gulf States as so forcibly brought out in the dissenting opinions of Mr. Justice Black and Mr. Justice Douglas.

As these Justices pointed out, the legislative history of the Submerged Lands Act is replete with assertions that the Congress intended to do equity in order to remedy a situation brought about by decisions of this Court which were based on technical and strictly legal principles, not reflected by earlier de-

cisions. Thus Senate Report No. 133 on page 24 states:

> "By this joint resolution the Federal Government is itself doing the equity expected of its citizens."

Similarly House Report No. 215, says on page 46:

> "The committee believes that, as a matter of policy, in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign states."

In answer to the statement made by the concurring Justices that Congress may indulge in largesse but it "cannot ask this court to exercise benevolence in its behalf", we say that the foregoing statements of purpose by the congressional committees do not request the court to exercise benevolence. They merely direct the court to determine state boundaries on equitable principles, and such principles dictate a parity of treatment for all states similarly situated.

The principle of equal treatment to all states is fundamental in the philosophy of our government. It is of the essence of our republican form of government. As this Court has said, "this Union was and is a Union of States, equal in power, dignity and authority", and that they must be maintained on an equal footing, and that if any state were deprived of any power constitutionally possessed by other states, as states, by reason of the terms of the acts admitting them to the Union, this "might come to be a union

of states unequal in power."[5] So it is in the case at bar. This Court's opinion recognizes two of the Gulf States as having jurisdiction and power over navigable waters to a distance of three leagues from coast while three other states, on the same Gulf, and similarly situated, are restricted in dignity and power to three miles because the Court finds differences in the terms of their admission to the Union as states.

It is true that all states do not possess the same extent of territory but jurisdiction over navigable waters involves political rights and powers primarily, and territorial rights are incidental and secondary. Your Honors so held in *United States v. Texas*, 339 U.S. 180. In the earlier case of *Wisconsin v. Michigan*, 295 U.S. 455, 462, the Court held that "equality of right and opportunity in respect of these (navigable) waters, including navigation, fishing and other uses is indispensable to the equal footing of the states bordering on such waters." The Court went further and held that the Acts of Admission of States bordering on navigable waters should be construed so as to place them upon an equal footing. Equal footing is a legal and constitutional principle which is founded on the equitable rule of fair and equal treatment to all states similarly situated. It is primarily for the Court rather

---

[5]*Coyle v. Smith*, 221 U.S. 559, 566-7
Dick v. U.S., 208 U.S. 340, 353
Boyd v. Nebraska, 143 U.S. 135, 170
Escanaba Transportation Co. v. Chicago, 107 U.S. 678, 689

than the Congress to apply this principle in the present case.

It seems inconceivable that the Congress had in mind the establishment of a *three league* corner and boundary for Texas and a *three mile* boundary for Louisiana when throughout the history of the nation the two states have been considered to have a common boundary on land and in the sea. It seems inconceivable that the Congress could have intended Florida to have a three (3) *league* boundary and Alabama to have a three (3) *mile* boundary when, as a fact, both territories were originally owned by Spain and came to the United States through Spain and by the same title and have been considered throughout their history to have a common boundary on land and in the sea.

The Government's attempt to show that there was not any three league boundary anywhere in the Gulf of Mexico has failed. One established by Texas in 1836 and another established by Florida in 1868 have now been recognized by the Court. No one can now dispute that the United States had a three league boundary in the Gulf in 1845.

The first American expression measuring a marginal sea in the Gulf of Mexico was with reference to Louisiana, its first territory on the Gulf Coast. This was recognized in the Treaty of Amity in 1819 which put the common corners of Spain and the United States IN THE SEA. **If no distance was stated, some distance was meant, and the Court has found that distance to have been three leagues into the sea.**

In 1836 the Republic of Texas established its boundary at that same corner in express language and said that it was three leagues into the sea.

It is conceded that the east line of Texas is the west line of Louisiana. It is conceded that if both States stopped at the Gulf, the southeast corner of Texas would have to be the southwest corner of Louisiana. **It is now accepted by the Court that the southeast corner of Texas in 1836 was three leagues from land into the Gulf of Mexico at the mouth of the Sabine.** Either *that point*, that southeast corner, bordered upon the United States or it was south of the uttermost extent of the United States. If it had been south of the uttermost extent of the United States, neither Texas nor Mexico before Texas, nor Spain before Mexico needed any recognition of it from the United States. Our people and our government would have been shocked if any official had then said that the seaward boundary of Spain's Mexican colony was two leagues further seaward than the seaward boundary of adjoining Louisiana. On the contrary, the spokesman for our Government and the spokesman for the Spanish Government then thought that this corner marked the boundaries for both countries and for Louisiana. Texas in 1836 freely avowed, and Texas now freely admits, that this corner, three leagues from land and the starting point of its boundary, was the end of "THE LINE ESTABLISHED BY THE UNITED STATES AND SPAIN IN 1819."

VIII. Louisiana, Mississippi and Alabama are entitled to three leagues on the basis of long continued possession and control

In its original answer (p. 21) Louisiana averred in its fourth defense that the United States has at all times agreed upon and recognized that states bordering the Gulf of Mexico own the marginal seas and the sub-soil to a distance of at least three leagues. In its fifth defense (p. 24) the state alleges that it has exercised continuous, undisturbed, and unchallenged authority over, and has had open, complete, notorious and exclusive possession over the area in question since its admission to the Union in 1812, and that the United States has never claimed or possessed it. In its sixth defense (p. 26), it alleges that the Federal Government has acknowledged and acquiesced in its possession and claim of ownership by requesting the state to pass laws ceding to the United States sites and tracts of land and water in this area for game refuges, lighthouses and other federal purposes, and is estopped from claiming this area from the state at this time. The answer also states (p. 26) that in view of Louisiana's long continued possession of the submerged lands claimed by the United States, there is a conclusive presumption that the United States has no right or title thereto. In the alternative the State says that these facts give contemporaneous construction to Louisiana's boundary as setting a three league boundary in the Gulf of Mexico. Although Louisiana laid most of its emphasis on the alternative plea it has not abandoned its pleas of limitations and estoppel

which were reiterated in its answer to the amended complaint.

These pleas on behalf of Louisiana are supported by the legislative history of the Submerged Lands Act. That conclusion results from this statement in Senate Report No. 133 on page 24:

> "The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 states in that it reestablishes in them as a matter of law that possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens."

Further support for these pleas are found in House Report No. 215 on page 15 to the effect that the Act:

> "Recognizes, confirms, vests, and establishes in the states the title to the Submerged Lands, which they have long claimed, over which they have always exercised all the rights and attributes of ownership."

Again, on page 42, House Report No. 215 states:

> "Whether equity should be done necessarily raises the question of how these equities came into existence. The committee finds they exist because of the affirmative acts of ownership by the states over a long period with the acquiescence and consent of the Federal Government."

Similar statements appear in House Report No.

215, page 46, and Senate Report No. 133, pages 6 and 67. See also Mr. Justice Black's dissenting opinion, page 2, notes 4 and 5.

It therefore follows that this Court's statement (Op. pps. 74-75) that there is no allegation that the geographical extent of Louisiana's assertions were ever drawn in question, or that the question of its boundary was ever considered, are not relevant and a reading of Louisiana's answer will show that the statements are inaccurate. Louisiana has in fact possessed and claimed three leagues from coast since 1812, twenty-seven (27) miles from coast since the Act of 1938 extended its boundaries, and still further seaward after Secretary Ickes disclaimed federal title to any part of the continental shelf.

Every state in the Union is entitled to rely upon the basic assumption that when it exercises jurisdiction over an area to the knowledge of the Federal Government and without challenge from the Federal Government that no belated claims to valuable areas will be approved by the Court. Your Honors felt obliged not to apply this basic principle in the California Case[6], but only because of overriding paramount federal rights then found to exist. The Congress has reconciled these paramount rights of nationality while restoring to the littoral states their historic claims. Surely acts of possession are entitled to great weight respecting these historic claims.

---

[6]United States v. California, 332 U.S. 19.

CONCLUSION

We respectfully submit that Louisiana—the keystone of the arch geographically and historically of our nation's gulf area, formed in historical fact the basis of our country's claims in the Gulf of Mexico to seaward boundaries, and it cannot be proper to confine the grant or confirmation or restoration made to Louisiana in the Submerged Lands Act to less than three (3) leagues from coast. We submit that Mississippi and Alabama are entitled to like measure.

Respectfully submitted,

JOE T. PATTERSON
Attorney General of Mississippi
Jackson, Mississippi

MacDONALD GALLION
Attorney General of Alabama
Montgomery, Alabama

GORDON MADISON
Assistant Attorney General
State of Alabama

WILLIAM G. O'REAR
Assistant Attorney General
State of Alabama

NICHOLAS S. HARE
Assistant Attorney General
State of Alabama

WILLARD W. LIVINGSTON
Assistant Attorney General
State of Louisiana

E. K. HANBY
Special Assistant
Attorney General
403 Neejin Building
Gadsden, Alabama

JOHN PATTERSON
Governor of Alabama

ROBERT P. BRADLEY
Legal Advisor to
John Patterson,
Governor of Alabama

WILLIAM C. YOUNGER
Director of Department
of Conservation
Care of State Capitol
Montgomery, Alabama
Of Counsel

HUGH M. WILKINSON
MORRIS WRIGHT
JAMES R. FULLER
MARC DUPUY, JR.
FRANK ELLIS
Of Counsel

JACK P. F. GREMILLION
Attorney General of Louisiana
Baton Rouge, Louisiana

W. SCOTT WILKINSON
Assistant Attorney General
17th Floor, Beck Building
Shreveport, Louisiana

VICTOR A. SACHSE
Assistant Attorney General
620 Commerce Building
Baton Rouge, Louisiana

EDWARD M. CARMOUCHE
Assistant Attorney General
1109 Pithon
Lake Charles, Louisiana

JOHN L. MADDEN
Assistant Attorney General
State Capitol
Baton Rouge, Louisiana

BAILEY WALSH
Special Counsel
1025 Connecticut Avenue, N. W.
Washington, D. S.

PROOF OF SERVICE

I, *Jack P. F. Gremillion*, Attorney General of the State of Louisiana, one of the Attorneys for said State in its petition for rehearing herein, and of counsel in the joint brief for Louisiana, Mississippi and Alabama in support of their respective petitions for rehearing, and a member of the Bar of the Supreme Court of the United States, certify that I have served the required number of copies of the above mentioned brief, by mailing said copies to the Attorney General and the Solicitor General of the United States, respectively, addressed to them at their offices in the Department of Justice Building, Washington, D. C. Said copies have been sent via air mail, postage prepaid, on June ____, 1960.

JACK P. F. GREMILLION,

2309-B. 6-60